

Building (Earthquake-prone Buildings) Amendment Bill

Government Bill

As reported from the committee of the whole House

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Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Dr Nick Smith

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Building (Earthquake-prone Buildings) Amendment Act **2013**.

2 Commencement

This Act comes into force on the earlier of—

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- (a) a date appointed by the Governor-General by Order in Council; and
- (b) the day that is 2 years after the date on which this Act receives the Royal assent.

Part 1
Amendments to principal Act

3	Principal Act	
	This Part amends the Building Act 2004 (the principal Act).	
4	Section 4 amended (Principles to be applied in performing functions or duties, or exercising powers, under this Act)	5
	In section 4(1)(c), replace “in relation to the grant of waivers or modifications of the building code and the adoption and review of policy on dangerous, earthquake-prone, and insanitary buildings or, as the case may be, dangerous dams” with “under subpart 6A of Part 2 (which relates to earthquake-prone buildings) or in relation to the grant of waivers or modifications of the building code or the adoption and review of policy on dangerous and insanitary buildings or dangerous dams”.	10
5	New section 5A and cross-heading inserted	
	After section 5, insert:	15
	<i>Transitional, savings, and related provisions</i>	
5A	Transitional, savings, and related provisions	
	The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.	
6	Section 7 amended (Interpretation)	20
	In section 7, insert in their appropriate alphabetical order:	
	earthquake-prone building has the meaning given in section 133AB	
	earthquake rating has the meaning given in section 133ABA	
	engineering assessment , in relation to a building or a part of a building, means an engineering assessment of the building or part that complies with the requirements of the EPB methodology	25
	EPB exemption notice means an exemption notice issued under section 133AS	
	EPB methodology means the methodology for identifying earthquake-prone buildings that is set by the chief executive under section 133AZ	30
	EPB notice means an earthquake-prone building notice issued under section 133AK	
	EPB register means the register of earthquake-prone buildings established and maintained under section 273(1)(aab)	
	heritage building means a building that is included on—	35

(a)	the New Zealand Heritage List/Rārangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or	
(b)	the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014	5
	heritage dam means a dam that is included on—	
(a)	the New Zealand Heritage List/Rārangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or	
(b)	the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014	10
	high seismic risk has the meaning given in section 133ABB	
	low seismic risk has the meaning given in section 133ABB	
	medium seismic risk has the meaning given in section 133ABB	
	priority building has the meaning given in section 133AC	15
	seismic work , in relation to a building or a part of a building that is subject to an EPB notice, means the building work required to ensure that the building or part is no longer earthquake prone	
7	Section 11 amended (Role of chief executive)	
(1)	After section 11(d), insert:	20
(da)	monitors, in accordance with section 169A , the application and effectiveness of subpart 6A of Part 2 (which relates to earthquake-prone buildings); and	
(2)	After section 11(i), insert:	
(ia)	sets a methodology under section 133AZ for identifying earthquake-prone buildings; and	25
7A	Section 45 amended (How to apply for building consent)	
	In section 45(1)(d), replace “section 240” with “section 219 or 240 (as applicable)”.	
8	Section 85 amended (Offences relating to carrying out or supervising restricted building work)	30
	In section 85(4), after “liable”, insert “on conviction”.	
9	Section 95 amended (Issue of code compliance certificate)	
	In section 95(c), replace “section 240” with “section 219 or 240 (as applicable)”.	35

- 10 Section 112 amended (Alterations to existing buildings)**
After section 112(2), insert:
- (3) This section is subject to **section 133AX**.
- 11 Subpart 6 heading in Part 2 amended**
In Part 2, in the subpart 6 heading, replace “certain categories of buildings” with “dangerous, affected, and insanitary buildings”. 5
- 12 Cross-heading above section 121 replaced**
Replace the cross-heading above section 121 with:
- Interpretation and application*
- 13 Section 122 repealed (Meaning of earthquake-prone building)** 10
Repeal section 122.
- 14 New section 123A inserted (Application of this subpart to parts of buildings)**
After section 123, insert:
- 123A Application of this subpart to parts of buildings** 15
- (1) If a territorial authority is satisfied that only part of a building is dangerous (within the meaning of section 121) or insanitary (within the meaning of section 123),—
- (a) the territorial authority may exercise any of its powers or perform any of its functions under this subpart in respect of that part of the building rather than the whole building; and 20
- (b) for the purpose of **paragraph (a)**, this subpart applies with any necessary modifications.
- (2) To the extent that a power or function of a territorial authority under this subpart relates to affected buildings,— 25
- (a) the territorial authority may exercise the power or perform the function in respect of all or part of an affected building; and
- (b) for the purpose of **paragraph (a)**, this subpart applies with any necessary modifications.
- 15 Cross-heading above section 124 amended** 30
In the cross-heading above section 124, delete “*earthquake-prone*”.
- 16 Section 124 amended (Dangerous, affected, earthquake-prone, or insanitary buildings: powers of territorial authority)**
- (1) In the heading to section 124, delete “**earthquake-prone**”.

- (2) In section 124(1), delete “earthquake-prone,”.
- (3) Repeal section 124(3).
- 17 Section 125 amended (Requirements for notice requiring building work or restricting entry)** 5
- Replace section 125(2)(e) with:
- (e) every statutory authority that has exercised a statutory power to classify or register, for any purpose, the building or the land on which the building is situated; and
- 18 Section 128 amended (Prohibition on using dangerous, affected, earthquake-prone, or insanitary building)** 10
- In the heading to section 128, delete “earthquake-prone,”.
- 19 Section 128A amended (Offences in relation to dangerous, affected, earthquake-prone, or insanitary buildings)**
- In the heading to section 128A, delete “earthquake-prone,”.
- 20 Section 129 amended (Measures to avoid immediate danger or to fix insanitary conditions)** 15
- In section 129(1)(a), replace “or section 122 or section 123” with “or 123”.
- 21 Cross-heading above section 131 amended**
- In the cross-heading above section 131, delete “, *earthquake-prone*,”.
- 22 Section 131 amended (Territorial authority must adopt policy on dangerous, earthquake-prone, and insanitary buildings)** 20
- (1) In the heading to section 131, delete “, **earthquake-prone**,”.
- (2) In section 131(1), delete “, earthquake-prone,”.
- 23 New subpart 6A of Part 2 inserted** 25
- After section 133, insert:
- Subpart 6A—Special provisions for earthquake-prone buildings
- Application and interpretation*
- 133AA Buildings to which this subpart applies**
- (1) This subpart applies to all buildings except the following:
- (a) a building that is used wholly or mainly for residential purposes (*but see subsection (2)*): 30
- (b) a farm building (being a shed or other building that is located on a farm and used primarily for farming activities or an ancillary purpose):

- (c) a stand-alone retaining wall (being a retaining wall that is not integral to the structure of a building):
 - (d) a fence:
 - (e) a monument (including a statue), unless the monument is capable of being entered by a person: 5
 - (f) a wharf:
 - (g) a bridge:
 - (h) a tunnel:
 - (i) a storage tank:
 - (j) a building that is a dam: 10
 - (k) a part of a building that is a dam.
- (2) Despite **subsection (1)(a)**, this subpart applies to a building described in that subsection if the building—
- (a) comprises 2 or more storeys; and
 - (b) either— 15
 - (i) is a hostel, boardinghouse, or other specialised accommodation; or
 - (ii) contains 3 or more household units.

133AB Meaning of earthquake-prone building

- (1) A building or a part of a building is **earthquake prone** if, having regard to the condition of the building or part and to the ground on which the building is built, and because of the construction of the building or part,— 20
- (a) the building or part will have its ultimate capacity exceeded in a moderate earthquake; and
 - (b) if the building or part were to collapse, the collapse would be likely to cause— 25
 - (i) injury or death to persons in or near the building or on any other property; or
 - (ii) damage to any other property.
- (2) Whether a building or a part of a building is earthquake prone is determined by the territorial authority in whose district the building is situated: *see* **section 133AJ**. 30
- (3) For the purpose of **subsection (1)(a)**, **ultimate capacity** and **moderate earthquake** have the meanings given to them by regulations.

Compare: 1991 No 150 s 66

133ABA Meaning of earthquake rating

- (1) In this Act, **earthquake rating**, in relation to a building or a part of a building that a territorial authority has determined is earthquake prone, means the de- 35

- gree to which the building or part meets the requirements of the building code—
- (a) that relate to how a building is likely to perform in an earthquake; and
 - (b) that would be used to design a new building on the same site; and
 - (c) as they apply on the day on which this section comes into force. 5
- (2) The earthquake rating of a building or a part of a building—
- (a) is determined by a territorial authority in accordance with the EPB methodology (*see* **section 133AJ**); and
 - (b) is specified on the EPB notice issued for the building or part and recorded in the EPB register; and 10
 - (c) determines the form of the EPB notice issued for the building or part (*see* **section 401C(a)**).
- (3) An earthquake rating may be expressed as a percentage or a percentage range.

Examples

If a territorial authority determines that a building meets 25% of the requirements of the building code referred to in **subsection (1)**, the earthquake rating of the building is 25%. 15

If a territorial authority determines that a building meets between 0% and 10% of the requirements of the building code referred in **subsection (1)**, the earthquake rating of the building is the range of 0% to 10%. 20

133ABB Meaning of low, medium, and high seismic risk

- (1) For the purposes of this Act, the area in which a building is located has—
- (a) a **low seismic risk** if the area has a *Z* factor that is less than 0.15; and
 - (b) a **medium seismic risk** if the area has a *Z* factor that is greater than or equal to 0.15 and less than 0.3; and 25
 - (c) a **high seismic risk** if the area has a *Z* factor that is greater than or equal to 0.3.
- (2) For the purpose of **subsection (1)**, the **Z factor** of an area is the seismic hazard factor that would be used to design a new building on a site in that area in accordance with the following, as they relate to calculating *Z* factors and as they apply on the day on which this section comes into force: 30
- (a) the building code; and
 - (b) verification methods; and
 - (c) standards incorporated by reference into the building code or a verification method. 35
- (3) The seismic risk of an area affects—
- (a) the time frame within which a territorial authority must—

- (i) apply the EPB methodology to identify buildings or parts of buildings in the area that are potentially earthquake prone (*see section 133AF*); and
 - (ii) report to the chief executive on its progress towards that objective; and
- (b) the deadline for completing seismic work on a building or a part of a building in the area, if it is subject to an EPB notice (*see section 133AL*).

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133AC Meaning of priority building

- (1) In this subpart, **priority building** means any of the following that are located in an area of medium or high seismic risk:
- (a) a hospital building that is likely to be needed in an emergency (within the meaning of the Civil Defence Emergency Management Act 2002) to provide—
 - (i) emergency medical services; or
 - (ii) ancillary services that are essential for the provision of emergency medical services:
 - (b) a building that is likely to be needed in an emergency for use as an emergency shelter or emergency centre:
 - (c) a building that is used to provide emergency response services (for example, policing, fire, ambulance, or rescue services):
 - (d) a building that is regularly occupied by at least 20 people and that is used as any of the following:
 - (i) an early childhood education and care centre licensed under Part 26 of the Education Act 1989:
 - (ii) a registered school or an integrated school (within the meaning of the Education Act 1989):
 - (iii) a private training establishment registered under Part 18 of the Education Act 1989:
 - (iv) a tertiary institution established under section 162 of the Education Act 1989:
 - (e) any part of an unreinforced masonry building that could—
 - (i) fall from the building in an earthquake (for example, a parapet, an external wall, or a veranda); and
 - (ii) fall onto any part of a public road, footpath, or other thoroughfare that a territorial authority has identified under **section 133AD(2)(a)**:
 - (f) a building that a territorial authority has identified under **section 133AD(2)(b)** as having the potential to impede a transport route of stra-

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- tegic importance (in terms of an emergency response) if the building were to collapse in an earthquake.
- (2) For the purposes of **subsection (1)(a) and (b)**, the likelihood of a building being needed in an emergency for a particular purpose must be assessed having regard to—
- (a) any national civil defence emergency management plan made under section 39 of the Civil Defence Emergency Management Act 2002; and
- (b) the civil defence emergency management group plan approved under section 48 of the Civil Defence Emergency Management Act 2002 that covers the district in which the building is situated.
- (3) If only part of a building meets the criteria set out in **subsection (1)**, only that part of the building is a priority building.
- (4) Whether a building is a priority building affects—
- (a) the deadline by which a territorial authority must identify whether the building or a part of the building is potentially earthquake prone (*see section 133AF*); and
- (b) the deadline for completing seismic work on the building or a part of the building, if it is subject to an EPB notice (*see section 133AL*).
- 133AD Role of territorial authority in identifying certain priority buildings**
- (1) This section applies to a territorial authority whose district includes any area of medium or high seismic risk.
- (2) The territorial authority,—
- (a) for the purpose of **section 133AC(1)(e)** (prioritising parts of unreinforced masonry buildings), must use the special consultative procedure in section 83 of the Local Government Act 2002 to identify any part of a public road, footpath, or other thoroughfare in an area of medium or high seismic risk—
- (i) onto which parts of an unreinforced masonry building could fall in an earthquake; and
- (ii) that has sufficient vehicle or pedestrian traffic to warrant prioritising the identification and remediation of those parts of unreinforced masonry buildings; and
- (b) for the purpose of **section 133AC(1)(f)** (prioritising buildings that could impede a strategic transport route),—
- (i) may, in its discretion, initiate the special consultative procedure in section 83 of the Local Government Act 2002 to identify buildings for that purpose; but
- (ii) must not identify buildings for that purpose other than in accordance with the special consultative procedure.

(3) However, a territorial authority is not required to act under **subsection (2)(a)** if there is no reasonable prospect of any thoroughfare in its district satisfying the criteria set out in **subsection (2)(a)(i) and (ii)**.

(4) If a territorial authority is required by **subsection (2)(a)** or decides under **subsection (2)(b)** to use the special consultative procedure in section 83 of the Local Government Act 2002, it must use the procedure within a time frame that enables the territorial authority to meet the applicable time frame under **section 133AF(4)** for identifying potentially earthquake-prone priority buildings in its district.

Identifying earthquake-prone buildings

133AF Territorial authority must identify potentially earthquake-prone buildings

(1) Within the applicable time frame under **subsection (4)**, a territorial authority—

(a) must apply the EPB methodology to buildings in its district to identify buildings or parts of buildings that are potentially earthquake prone; and

(b) may, if it has reason to suspect that a building or a part of a building in its district may be earthquake prone, identify the building or part as potentially earthquake prone, whether or not by reference to any aspect of the EPB methodology.

(2) Until the end of the applicable time frame, a territorial authority must report to the chief executive on its progress towards identifying buildings or parts of buildings within its district that are potentially earthquake prone as follows:

(a) if the whole district is of low seismic risk, every 3 years; or

(b) if the district includes an area of medium seismic risk, but no areas of high seismic risk, every 2 years; or

(c) if the district includes an area of high seismic risk, every year.

(3) After the end of the applicable time frame, a territorial authority may, if it has reason to suspect that a building or a part of a building in its district may be earthquake prone, identify the building or part as potentially earthquake prone, whether or not by reference to the EPB methodology.

(4) The **applicable time frame** is the period commencing on the day on which this section comes into force (the **commencement date**) and ending on,—

(a) for each area of low seismic risk, the expiry of 15 years after the commencement date; and

(b) for each area of medium seismic risk, the expiry of the following period after the commencement date:

(i) 5 years for priority buildings; and

(ii) 10 years for other buildings; and

- (c) for each area of high seismic risk, the expiry of the following period after the commencement date:
 - (i) 2 years and 6 months for priority buildings; and
 - (ii) 5 years for other buildings.

133AG Territorial authority must request engineering assessment of potentially earthquake-prone buildings 5

- (1) If a territorial authority identifies a building or a part of a building as potentially earthquake prone, the territorial authority must ask the owner of the building or part to provide an engineering assessment of the building or part. 10
- (2) The request must—
 - (a) be in writing; and
 - (b) be dated; and
 - (c) identify the building or the part of a building that the territorial authority has identified as potentially earthquake prone; and
 - (d) explain the basis on which the territorial authority has identified the building or the part of the building as potentially earthquake prone; and 15
 - (e) explain the owner’s obligations under **section 133AH**; and
 - (f) state whether the building is a priority building; and
 - (g) state the due date for the engineering assessment, which must be 12 months after the date of the request; and 20
 - (h) explain that if the owner is not reasonably able to provide an engineering assessment by the due date (for example, because of a shortage of people qualified to conduct engineering assessments), the owner may apply under **section 133AI** for an extension of up to 12 months; and
 - (i) explain the consequences of the owner failing to provide the engineering assessment by the due date; and 25
 - (j) explain what will happen if the territorial authority determines that the building or the part of the building is earthquake prone.

133AH Obligations of owners on receiving request for engineering assessment

- (1) If a territorial authority asks the owner of a building or a part of a building to provide an engineering assessment of the building or part under **section 133AG**, the owner must, by the due date (which may be extended under **section 133AI**),— 30
 - (a) provide to the territorial authority an engineering assessment of the building or part that complies with the requirements of the EPB methodology; or 35

- (b) provide to the territorial authority evidence of a factual error in the basis on which the territorial authority has identified the building or part as potentially earthquake prone; or
 - (c) notify the territorial authority that the owner does not intend to provide an engineering assessment. 5
- (2) If a territorial authority is satisfied that it has incorrectly identified a building or a part of a building as potentially earthquake prone, the territorial authority must cancel the request for an engineering assessment and give the owner of the building or part written notice of that fact.
- (3) If an owner fails to comply with **subsection (1)**, or notifies the territorial authority under **subsection (1)(c)** that the owner does not intend to provide an engineering assessment of a building or a part of a building,— 10
 - (a) the territorial authority must, under **section 133AJ(4)**, proceed as if it had determined the building or part to be earthquake prone; and
 - (b) the EPB notice issued for the building or part must, under **section 133AK(4)**, be in the form that is prescribed for the category of earthquake ratings that includes the lowest earthquake ratings; and 15
 - (c) the territorial authority may obtain an engineering assessment of the building or part and recover, as a debt due from the owner of the building or part, the costs of doing so. 20

133AI Owners may apply for extension of time to provide engineering assessment

- (1) This section applies if—
 - (a) a territorial authority asks the owner of a building or a part of a building to provide an engineering assessment of the building or part under **section 133AG**; and 25
 - (b) the owner is unable to provide an engineering assessment by the due date (for example, because of a shortage of people qualified to conduct engineering assessments).
- (2) The owner may, no later than 2 months before the due date, apply to the territorial authority for an extension of up to 12 months from the due date. 30
- (3) The territorial authority must deal with the application promptly, by—
 - (a) granting the extension and notifying the owner in writing of the revised due date for the engineering assessment; or
 - (b) notifying the owner in writing that the extension has not been granted. 35
- (4) A territorial authority must not extend the due date for an engineering assessment more than once.

133AJ Territorial authority must determine whether building is earthquake prone

- (1) If a territorial authority receives an engineering assessment of a building or a part of a building in response to a request made under **section 133AG**, the territorial authority must determine, in accordance with the EPB methodology,— 5
- (a) whether the building or part is earthquake prone; and
 - (b) if the building or part is earthquake prone, its earthquake rating.
- (2) If the territorial authority determines that the building or part is not earthquake prone, the territorial authority must promptly notify the owner in writing of its decision. 10
- (3) If the territorial authority determines that the building or part is earthquake prone, the territorial authority must promptly—
- (a) issue an EPB notice for the building or part under **section 133AK**; and
 - (b) record the details of the decision in the EPB register and update other information in the EPB register as necessary. 15
- (4) If a territorial authority asks the owner of a building or a part of a building to provide an engineering assessment of the building or part under **section 133AG**, and either does not receive it by the due date or is notified that the owner does not intend to provide it by the due date,—
- (a) the territorial authority— 20
 - (i) must proceed as if it had determined the building or part to be earthquake prone; and
 - (ii) need not determine the earthquake rating of the building or part; and
 - (b) this Act applies as if the territorial authority had determined the building or part to be earthquake prone. 25

Remediation of earthquake-prone buildings

133AK Territorial authority must issue EPB notice for earthquake-prone buildings

- (1) This section applies if a territorial authority makes any of the following decisions: 30
- (a) determining under **section 133AJ or 133AZC or clause 2 of Schedule 1AA** that a building or a part of a building is earthquake prone; or
 - (b) revoking an exemption under **section 133AS**; or
 - (c) revoking an extension under **section 133AT**; or 35
 - (d) determining under **section 133ATB or 133AZC** that the earthquake rating of a building or a part of a building that is subject to an EPB no-

- tice is different from the earthquake rating (if any) of the building or part that is stated in the notice or the EPB register.
- (2) The territorial authority must promptly issue an EPB notice for the building or the part of the building, which must—
- (a) be dated; and 5
 - (b) be in the prescribed form; and
 - (c) identify the building or the part of a building determined to be earthquake prone; and
 - (d) specify whether the building or part is a priority building; and
 - (e) specify the earthquake rating of the building or part (unless this has not been determined: *see* **section 133AJ(4)** and **clause 2 of Schedule 1AA**); and 10
 - (f) state that the owner of the building or part is required to carry out building work to ensure that the building or part is no longer earthquake prone (**seismic work**); and 15
 - (g) state the deadline for completing seismic work (*see* **section 133AL**); and
 - (h) state that the owner of the building or part may apply under **section 133AS** for an exemption from the requirement to carry out seismic work; and 20
 - (i) if the building is a heritage building to which **section 133AT** applies, state that the owner of the building or part may apply under that section for an extension of time to complete seismic work; and
 - (j) state that the owner is not required to complete seismic work if the territorial authority determines or is satisfied, in accordance with **section 133ATB**, that the building or part is not earthquake prone. 25
- (3) If the earthquake rating of a building or a part of a building is a percentage range that spans more than 1 prescribed category of earthquake ratings, the notice issued for the building or part must be in the form prescribed for the category that includes the lowest point in the percentage range. 30
- (4) If the territorial authority is proceeding under **section 133AJ(4)** as if it had determined a building or a part of a building to be earthquake prone (because the owner has not provided an engineering assessment),—
- (a) the notice must be in the form prescribed for the category of earthquake ratings that includes the lowest earthquake ratings (*see* **section 401C(a)**); and 35
 - (b) the notice must state—
 - (i) that the territorial authority has not determined whether the building or part is earthquake prone, but is proceeding as if it had; and

- (ii) that the earthquake rating of the building or part has not been determined.
- (5) The territorial authority must give a copy of the notice to—
- (a) the owner of the building or the part of the building; and
 - (b) every person who has an interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952; and
 - (c) every person claiming an interest in the land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952; and
 - (d) every statutory authority that has exercised a statutory power to classify or register, for any purpose, the building or the land on which the building is situated; and
 - (e) Heritage New Zealand Pouhere Taonga, if the building is a heritage building.
- (6) However, the notice is not invalid because a copy of it has not been given to any or all of the persons referred to in **subsection (5)**.

133AL Deadline for completing seismic work

- (1) The owner of a building or a part of a building that is subject to an EPB notice must complete seismic work on the building or part on or before the deadline specified in this section.
- (2) The deadline is the expiry of whichever of the following periods, as measured from the date of the first EPB notice issued for the building or the part of the building (rather than any replacement EPB notice), is applicable:
- (a) in an area of low seismic risk, 35 years for any building; and
 - (b) in an area of medium seismic risk, 12 years and 6 months for a priority building and 25 years for any other building; and
 - (c) in an area of high seismic risk, 7 years and 6 months for a priority building and 15 years for any other building.
- (3) ~~However, if the building is a heritage building for which an extension is granted under **section 133AT**, the deadline is the expiry of the period of the extension, as measured from the deadline that would apply under **subsection (2)** if no extension were granted.~~
- (3) However,—
- (a) if **clause 2 of Schedule 1AA** applies to the building or the part of the building, the deadline is the deadline determined in accordance with that clause; and
 - (b) if the building or the part of the building is a heritage building for which an extension is granted under **section 133AT**, the deadline is the expiry

of the period of the extension, as measured from the deadline that would apply under **paragraph (a) or subsection (2)** if no extension were granted.

- (4) To avoid doubt, seismic work may include the demolition of a building or part of a building. 5

133AS Owner may apply for exemption from requirement to carry out seismic work

- (1) The owner of a building or a part of a building that is subject to an EPB notice may apply to a territorial authority for an exemption from the requirement to carry out seismic work on the building or part. 10
- (2) An application must be in writing and must be accompanied by any fee imposed by the territorial authority under section 219.
- (3) The territorial authority must deal with the application promptly, by doing one of the following:
- (a) if the territorial authority is satisfied that the building or the part of the building has the prescribed characteristics (*see **section 401C(b)***),— 15
- (i) granting the exemption and issuing an EPB exemption notice; and
- (ii) recording the details of the exemption in the EPB register and updating other information in the EPB register as necessary; or
- (b) notifying the owner in writing that the exemption has not been granted. 20
- (4) An EPB exemption notice must—
- (a) identify the building or the part of the building that is subject to an EPB notice; and
- (b) state that the owner of the building or the part of the building is exempt from the requirement to carry out seismic work on the building or part; 25
- and
- (c) give the territorial authority's reasons for granting the exemption.
- (8) A territorial authority may review an exemption at any time, and may revoke it if satisfied that the building no longer has the prescribed characteristics.
- (9) An exemption stays in force until the territorial authority revokes it. 30
- (10) As soon as practicable after revoking an exemption, a territorial authority must—
- (a) reissue an EPB notice under **section 133AK** for the building or the part of the building that is earthquake prone; and
- (b) record the details of the revocation in the EPB register and update other 35
- information in the EPB register as necessary.

133AT Owners of certain heritage buildings may apply for extension of time to complete seismic work

(1AA) This section applies to a building if—

- (a) the building or a part of the building is subject to an EPB notice; and
- (b) the building is—
 - (i) included as a Category 1 historic place on the New Zealand Heritage List/Rārangī Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or
 - (ii) included on the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014.

(1) The owner of the building or the part of the building (the **owner**) may apply to the territorial authority for an extension of time to complete seismic work on the building or part.

(2) An application must be in writing and must be accompanied by any fee imposed by the territorial authority under section 219.

(3) The territorial authority may, by notice in writing to the owner, extend by up to 10 years the deadline for completing seismic work that applies under **section 133AL(2) or (3)(a)**.

(4) If the territorial authority grants an extension, the owner must—

- (a) take all reasonably practicable steps to manage or reduce the risks associated with the building or the part of the building being earthquake prone; and
- (b) comply with any conditions imposed by the territorial authority for the purpose of managing or reducing the risks referred to in **paragraph (a)**.

(5) If the owner fails to comply with **subsection (4)**, the territorial authority may revoke the extension.

(6) As soon as practicable after granting or revoking an extension, a territorial authority must—

- (a) reissue an EPB notice under **section 133AK** for the building or the part of the building; and
- (b) record the details of the extension or revocation in the EPB register and update other information in the EPB register as necessary.

133ATA EPB notices and EPB exemption notices to be attached to earthquake-prone buildings

(1) As soon as practicable after issuing an EPB notice or an EPB exemption notice for a building or a part of a building, the territorial authority must—

- (a) attach, or require the owner of the building or part to attach, the notice in a prominent place on or adjacent to the building; and

- (b) remove, or authorise the owner of the building or part to remove, any superseded EPB notice or EPB exemption notice that is attached on or adjacent to the building.
 - (2) If an EPB notice or an EPB exemption notice ceases to be attached in a prominent place on or adjacent to a building, or becomes illegible,— 5
 - (a) the owner of the building or the part of the building to which the notice relates must notify the territorial authority of that fact; and
 - (b) the territorial authority must issue a replacement notice; and
 - (c) **subsection (1)** applies to the replacement notice.
 - (3) **Subsection (2)** does not apply if the removal of the notice is authorised by or under this subpart. 10
- 133ATB Territorial authority may assess information relating to earthquake-prone building status at any time**
- (1) This section applies if, at any time,— 15
 - (a) the owner of a building or a part of a building sends to the territorial authority an engineering assessment of the building or part (whether or not the building or part is already subject to an EPB notice); or 15
 - (b) a territorial authority is satisfied, on the basis of evidence other than an engineering assessment, that a building or a part of a building that is subject to an EPB notice is not earthquake prone. 20
 - (2) As soon as practicable after receiving an engineering assessment under this section for a building or a part of a building, the territorial authority must determine, in accordance with the EPB methodology,— 25
 - (a) whether the building or part is earthquake prone; and
 - (b) if the building or part is earthquake prone, its earthquake rating. 25
 - (3) If the territorial authority determines or is satisfied that the building or part is not earthquake prone, the territorial authority must promptly— 30
 - (a) notify the owner in writing of its decision; and
 - (b) if the building or part is already subject to an EPB notice,— 30
 - (i) remove the building from the EPB register; and 30
 - (ii) remove, or authorise the owner of the building or part to remove, any EPB notice or EPB exemption notice attached on or adjacent to the building.
 - (4) If the territorial authority determines that the building or part is earthquake prone, the territorial authority must promptly— 35
 - (a) notify the owner in writing of its decision; and
 - (b) if the building or part is not already subject to an EPB notice, issue an EPB notice for the building or part under **section 133AK**; and

- (c) if the building or part is already subject to an EPB notice,—
 - (i) if the earthquake rating has changed, reissue an EPB notice under **section 133AK** for the building or part; and
 - (ii) if the earthquake rating has not changed, notify the owner in writing of that fact; and
- (d) record the details of the decision in the EPB register and update other information in the EPB register as necessary.

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Powers of territorial authorities in respect of earthquake-prone buildings

133AV Territorial authority may impose safety requirements

- (1) If a territorial authority determines that a building or a part of a building in its district is earthquake prone, the territorial authority may do any or all of the following:
 - (a) put up a hoarding or fence to prevent people from approaching the building or part nearer than is safe;
 - (b) attach in a prominent place, on or adjacent to the building or part, a notice that warns people not to approach the building or part;
 - (c) issue a notice that complies with **subsection (1A)** restricting entry to the building or part for particular purposes or restricting entry to particular persons or groups of persons.
- (1A) A notice issued under **subsection (1)(c)**—
 - (a) must be in writing; and
 - (b) must be fixed to the building in question; and
 - (c) must be given in the form of a copy to the persons listed in **section 133AK(5)**; and
 - (d) may be issued for a period of up to 30 days; and
 - (e) may be reissued, but not more than once, for a further period of up to 30 days.
- (1B) However, a notice issued under **subsection (1)(c)**, if fixed on the building, is not invalid because a copy of it has not been given to any or all of the persons listed in **section 133AK(5)**.
- (2) If, in relation to a building or a part of a building, a territorial authority has put up a hoarding or fence or attached a notice under **subsection (1)(b) or (c)**, no person may, other than in accordance with the terms of a notice issued under **subsection (1)(c)**,—
 - (a) use or occupy the building or part; or
 - (b) permit another person to use or occupy the building or part.

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133AW Territorial authority may carry out seismic work

- (1) This section applies if seismic work on a building or a part of a building that is subject to an EPB notice is not completed by the deadline that applies under **section 133AL**, or is not proceeding with reasonable speed in the light of that deadline. 5
- (2) The territorial authority may apply to a District Court for an order authorising the territorial authority to carry out seismic work on the building or the part of the building.
- (3) Before the territorial authority applies to a District Court under **subsection (2)**, the territorial authority must give the owner of the building or the part of the building not less than 10 days' written notice of its intention to do so. 10
- (4) If a territorial authority carries out seismic work on a building or a part of a building under the authority of an order made under **subsection (2)**,—
- (a) the owner of the building or part is liable for the costs of the work; and
 - (b) the territorial authority may recover those costs from the owner; and 15
 - (c) the amount recoverable by the territorial authority becomes a charge on the land on which the work was carried out.
- (5) Seismic work authorised to be done under this section may include the demolition of a building or part of a building. 20
- Compare: 1991 No 150 s 65(4), (5)

133AX Alterations to buildings subject to EPB notice

- (1) This section applies instead of section 112 in relation to an application for a building consent for the alteration of a building or a part of a building that is subject to an EPB notice.
- (2) A building consent authority must not grant a building consent for the alteration of the building or part unless the building consent authority is satisfied that,— 25
- (a) after the alteration, the building will comply, as nearly as is reasonably practicable, with the provisions of the building code that relate to—
 - (i) means of escape from fire; and 30
 - (ii) access and facilities for persons with disabilities (if this is a requirement in terms of section 118); and
 - (b) after the alteration, the building will,—
 - (i) if it complied with the other provisions of the building code immediately before the building work began, continue to comply 35 with those provisions; or
 - (ii) if it did not comply with the other provisions of the building code immediately before the building work began, continue to comply at least to the same extent as it did then comply; and

- (c) in the case of a substantial alteration, the alteration includes the necessary seismic work. An alteration of a building is a **substantial alteration** if the territorial authority is satisfied that the alteration meets criteria prescribed under **section 401C(ba)**.
- (3) Despite **subsection (2)(a)**, a territorial authority may, by written notice to the owner of the building or part, specify 1 or more of the provisions of the building code referred to in **subsection (2)(a)** and allow the alteration of the building or part without the building complying with the specified provisions if the territorial authority is satisfied that—
- (a) the alteration includes the necessary seismic work; and
- (b) if the building were required to comply with the specified provisions, it would be unduly onerous for the owner in the circumstances; and
- (c) the permitted non-compliance with the specified provisions is no more than is reasonably necessary in the light of the objective of ensuring that the building or part is no longer earthquake prone; and
- (d) after the alteration, the building will continue to comply with the specified provisions, and other provisions of the building code, to at least the same extent as it complied with those provisions immediately before the building work began.
- (4) When making the assessments required by **subsection (3)(b) and (c)**, the territorial authority must take into account the matters (if any) prescribed under **section 401C(c)**.

Offences

133AY Offences in relation to earthquake-prone buildings

Failure to complete seismic work

- (1) The owner of a building or a part of a building that is subject to an EPB notice who fails to complete seismic work on the building or part by the deadline that applies under **section 133AL**—
- (a) commits an offence; and
- (b) is liable on conviction to a fine not exceeding \$200,000.

Failures relating to EPB notices and EPB exemption notices

- (2) A person commits an offence if—
- (a) a territorial authority requires the person to attach an EPB notice or an EPB exemption notice on or adjacent to a building under **section 133ATA**; and
- (b) the person—
- (i) fails to attach the notice in accordance with that section; or
- (ii) attaches the notice otherwise than in accordance with that section.

- (3) A person commits an offence if—
 - (a) the person is required under **section 133ATA(2)(a)** to notify the territorial authority when an EPB notice or an EPB exemption notice ceases to be attached on or adjacent to a building or becomes illegible; and
 - (b) the person fails to notify the territorial authority in accordance with that section. 5
- (4) A person who commits an offence under **subsection (2) or (3)** is liable on conviction to a fine not exceeding \$20,000.
Failure to comply with safety requirements
- (5) A person who fails to comply with **section 133AV(2)** commits an offence and is liable on conviction— 10
 - (a) to a fine not exceeding \$200,000; and
 - (b) in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues. 15

Methodology for identifying earthquake-prone buildings (EPB methodology)

133AZ Chief executive must set methodology for identifying earthquake-prone buildings (EPB methodology)

- (1) The chief executive must set a methodology for identifying earthquake-prone buildings (the **EPB methodology**) that specifies how territorial authorities are to— 20
 - (a) identify the buildings or parts of buildings in their district that are potentially earthquake prone; and
 - (b) determine whether a potentially earthquake-prone building or part of a building is earthquake prone and, if it is, its earthquake rating. 25
- (2) The methodology—
 - (a) may specify buildings, parts of buildings, or classes of buildings or parts of buildings that are potentially earthquake prone; and
 - (b) may specify a method for identifying buildings, parts of buildings, or classes of buildings or parts of buildings that are potentially earthquake prone; and 30
 - (c) must specify the requirements for an engineering assessment of a building or a part of a building; and
 - (d) must specify how a territorial authority may use engineering or other tests completed before the commencement of this section to determine whether a building or a part of a building is earthquake prone or potentially earthquake prone. 35

- (3) The chief executive must set the methodology no later than 1 month after the commencement of this section.
- (4) The methodology may incorporate material by reference in accordance with sections 405 to 413.
- (5) The chief executive may amend or replace the methodology at any time. 5
- (6) If the chief executive amends or replaces the methodology, **sections 133AZA and 133AZB** apply in respect of the amendment or replacement with any necessary modifications.

133AZA Consultation requirements for setting EPB methodology

- (1) Before setting the EPB methodology, the chief executive must do everything reasonably practicable on his or her part to consult territorial authorities and any other persons or organisations that appear to the chief executive to be representative of the interests of persons likely to be substantially affected by the setting of the methodology. 10
- (2) The process for consultation should, to the extent practicable in the circumstances, include— 15
 - (a) giving adequate and appropriate notice of the intention to set the methodology; and
 - (b) giving a reasonable opportunity for territorial authorities and other interested persons to make submissions; and 20
 - (c) giving adequate and appropriate consideration to submissions.
- (3) A failure to comply with this section does not affect the validity of the methodology.

133AZB Notification and availability of EPB methodology

- (1) As soon as practicable after the chief executive has set the EPB methodology, the chief executive must— 25
 - (a) notify territorial authorities that the methodology has been set; and
 - (b) publicly notify that the methodology has been set; and
 - (c) make the methodology available on the Internet in a form that is publicly accessible at all reasonable times; and 30
 - (d) make the methodology available in printed form for purchase on request by members of the public.
- (2) The methodology is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 35

*Miscellaneous***133AZC What territorial authority must do if definition of ultimate capacity or moderate earthquake amended**

- (1) This section applies if the definition of ultimate capacity or moderate earthquake, as set out in regulations made for the purpose of **section 133AB** (meaning of earthquake-prone building), is amended or replaced. 5
- (2) As soon as is reasonably practicable after the definition is amended or replaced, a territorial authority—
- (a) must consider whether any decision that it has made under this subpart should be reassessed in the light of the changes to the definition; and 10
- (b) may remake the decision.
- (3) **Section 133ATB(3) and (4)** applies if a decision is remade under this section.

24 Section 154 amended (Powers of regional authorities in respect of dangerous dams) 15

Repeal section 154(2).

25 Section 155 amended (Requirements for notice given under section 154)

Replace section 155(2)(e) with:

- (e) every statutory authority that has exercised a statutory power to classify or register, for any purpose, the dam or the land on which the dam is situated; and 20

26 New section 169A inserted (Chief executive must monitor application and effectiveness of subpart 6A of Part 2 (earthquake-prone buildings))

After section 169, insert:

169A Chief executive must monitor application and effectiveness of subpart 6A of Part 2 (earthquake-prone buildings) 25

The chief executive must monitor the application of **subpart 6A** of Part 2 and its effectiveness in regulating earthquake-prone buildings.

27 Section 175 amended (Chief executive may publish guidance information)

- (1) In section 175(1)(b)(iii), after “practitioners”, insert “; and”. 30
- (2) After section 175(1)(b), insert:
- (c) owners of buildings and members of the public in relation to the application of **subpart 6A** of Part 2.

- 28 Section 177 amended (Application for determination)**
- (1) In section 177(3)(f), replace “(which relate to dangerous, earthquake-prone, and insanitary buildings)” with “(which relate to dangerous, affected, and insanitary buildings)”.
- (2) After section 177(3)(f), insert: 5
- (fa) any power of decision of a territorial authority under **subpart 6A** of Part 2, other than a power of decision under **section 133AW** (territorial authority may carry out seismic work):
- 29 Section 181 amended (Chief executive may make determination on own initiative)** 10
- (1) In section 181(1), replace “section 177” with “**subsection (4)**”.
- (2) Replace section 181(2)(a) with:
- (a) may give a direction under subsection (1) either before or after a decision or a power that relates to the matter is made or exercised (as the case may be); and 15
- (3) After section 181(3), insert:
- (4) **Subsection (1)** applies in respect of a matter referred to in section 177.
- 30 Section 216 amended (Territorial authority must keep information about buildings)**
- Repeal section 216(2)(b)(ivc). 20
- 31 Section 218 amended (Territorial authority must provide information to chief executive for purpose of facilitating performance of chief executive’s function under section 169)**
- (1) In the heading to section 218, replace “**section 169**” with “**sections 169 and 169A**”. 25
- (2) In section 218(1), after “etc”, insert “and **section 169A** (which relates to monitoring the application and effectiveness of **subpart 6A** of Part 2 (earthquake-prone buildings))”.
- 32 Section 222 amended (Inspections by territorial authority)**
- Replace section 222(1)(b)(ii) with: 30
- (ii) the purpose of determining whether the building is dangerous or insanitary within the meaning of subpart 6 of Part 2; or
- (iii) the purpose of determining whether the building or a part of the building is earthquake prone or potentially earthquake prone within the meaning of **subpart 6A** of Part 2. 35
- 33 Section 273 amended (Chief executive must keep registers)**
- (1) After section 273(1)(aaa), insert:

(aab) a register of earthquake-prone buildings for the purposes of **subpart 6A** of Part 2 (the **EPB register**):

(2) After section 273(3), insert:

(3A) The EPB register must be kept in a manner that enables territorial authorities, as well as the chief executive, to record and update information in the register.

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34 Section 274 amended (Purpose of registers)

After section 274(a)(iaa), insert:

(iab) in the case of the EPB register, information relating to buildings or parts of buildings that territorial authorities have determined to be earthquake prone; and

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35 New sections 275A and 275B inserted

After section 275, insert:

275A Content of EPB register

(1) The EPB register must contain the following information for each building or part of a building that a territorial authority determines is earthquake prone:

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(a) the name of the territorial authority that made the decision:

(b) the address of, and any other details necessary to identify, the building or the part of the building determined to be earthquake prone:

(c) whether the building is a priority building:

(d) the date of the EPB notice issued for the building or part:

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(e) the earthquake rating of the building or part, as determined by the territorial authority:

(f) the deadline for completing seismic work that applies under **section 133AL** or ~~clause 2 of Schedule 1AA~~ (unless an exemption from the requirement to carry out seismic work is in force under **section 133AS**):

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(g) the details of any exemption from the requirement to carry out seismic work that is in force under **section 133AS**:

(h) the details of any extension of time for completing seismic work that is in force under **section 133AT**, including a summary of any conditions imposed by the territorial authority for the purpose of **section 133AT(4)(b)**:

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(i) any information prescribed under **section 401C(d)**.

(2) If the territorial authority is proceeding under **section 133AJ(4)** as if it had determined the building or the part of the building to be earthquake prone (because the owner has not provided an engineering assessment),—

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(a) **subsection (1)(e)** does not apply; and

<p>(b) the register must contain statements to the following effect:</p> <p>(i) that the territorial authority has not determined whether the building or part is earthquake prone, but is proceeding as if it had because the owner has not provided an engineering assessment; and</p> <p>(ii) that the EPB notice issued for the building or part is in the form prescribed for the category of earthquake ratings that includes the lowest earthquake ratings (<i>see section 401C(a)</i>); and</p> <p>(iii) that the earthquake rating of the building or part has not been determined.</p>	5
<p>275B Modification of chief executive’s obligation to make EPB register available for public inspection</p> <p>(1) This section applies to information that is required to be kept in the EPB register by regulations made under section 401C(d) (the prescribed information).</p> <p>(2) Despite section 273(2), the chief executive need not make the prescribed information available for public inspection, or include the prescribed information in a copy of all or part of the register supplied to a person under that section, unless the regulations require the information to be made available for public inspection.</p> <p>(3) However, the chief executive may supply any prescribed information contained in the EPB register to an entity in the State services (within the meaning of the State Sector Act 1988) if the chief executive is satisfied that it is necessary or desirable for the entity to have the information to assist in the exercise of its powers or the performance of its functions under any enactment.</p> <p>(4) This section does not limit the Official Information Act 1982.</p>	10 15 20 25
<p>36 Section 381 amended (District Court may grant injunctions for certain continuing breaches)</p> <p>(1) In section 381(1)(b), delete “, earthquake prone.”.</p> <p>(2) After section 381(1)(b), insert:</p> <p>(ba) a building or a part of a building is earthquake prone in terms of sub-part 6A of Part 2 and the territorial authority has failed to take appropriate action; or</p>	30
<p>37 New section 401C inserted (Regulations: earthquake-prone buildings)</p> <p>After section 401B, insert:</p> <p>401C Regulations: earthquake-prone buildings</p> <p>The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that,—</p> <p>(a) for the purpose of section 133AK,—</p>	35

- (i) prescribe categories of earthquake ratings:
- (ii) prescribe the form of EPB notice to be issued for buildings or parts of buildings in each earthquake ratings category:
- (iii) prescribe the form of EPB notice to be issued for a building or a part of a building to which **clause 2 of Schedule 1AA** (which is a transitional provision) applies: 5
- (b) prescribe the age, construction type, use, level of occupancy, location in relation to other buildings or building types, and any other characteristics that a building or a part of a building must have for a territorial authority to grant an exemption under **section 133AS** from the requirement to carry out seismic work on the building or part: 10
- (ba) prescribe the criteria for determining whether a building alteration is a substantial alteration for the purpose of **section 133AX(2)(c)**:
- (c) prescribe the matters that a territorial authority must take into account when making the assessments required by **section 133AX(3)(b) and (c)** (for the purpose of deciding whether to allow the alteration of a building or a part of a building that is subject to an EPB notice without the building complying with specified provisions of the building code): 15
- (d) prescribe information that must be kept in the EPB register, and specify whether the chief executive is required to make that information available for public inspection (*see* **section 275B**). 20

38 Section 402 amended (Regulations: general)

- (1) In section 402(1)(p), replace “122” with “**133AB**”.
- (2) After section 402(1)(p), insert:
 - (pa) defining ultimate capacity for the purposes of **section 133AB** (meaning of earthquake-prone building): 25

39 Section 405 amended (Incorporation of material by reference into regulations, certain Orders in Council, acceptable solutions, and verification methods)

- (1) In the heading to section 405, replace “**regulations, certain Orders in Council, acceptable solutions, and verification methods**” with “**certain instruments, solutions, and methods**”. 30
- (2) In section 405(4)(c), after “285”, insert “; and”.
- (3) After section 405(4)(c), insert:
 - (d) the EPB methodology set under **section 133AZ**. 35

41 New Schedule 1AA inserted

Before Schedule 1, insert the **Schedule 1AA** set out in the **Schedule** of this Act.

41A Consequential amendments to Building Amendment Act 2012

- (1) This section amends the Building Amendment Act 2012.
- (2) In the Schedule,—
 - (a) in new Schedule 1A, clause 1(e), replace “section 240” with “section 219 or 240 (as applicable)”; and 5
 - (b) in new Schedule 1B, clause 1(e), replace “section 240” with “section 219 or 240 (as applicable)”; and
 - (c) in new Schedule 1C, clause 1(e), replace “section 240” with “section 219 or 240 (as applicable)”; and
 - (d) in new Schedule 1D, clause 1(f), replace “section 240” with “section 219 or 240 (as applicable)”. 10

41B Consequential amendments to Fire Safety and Evacuation of Buildings Regulations 2006

- (1) This section amends the Fire Safety and Evacuation of Buildings Regulations 2006. 15
- (2) In Schedule 3, clause 8(a), after “section 112”, insert “or **133AX**”.
- (3) In Schedule 4, Form 1, paragraph 26, after “section 112”, insert “or **133AX**”.

Part 2**Amendment to Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 20****42 Principal regulations**

This **Part** amends the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 (the **principal regulations**).

43 Regulation 7 replaced (Earthquake-prone buildings: moderate earthquake defined) 25

Replace regulation 7 with:

7 Earthquake-prone buildings: moderate earthquake defined

- (1) For the purposes of **section 133AB** of the Act (meaning of earthquake-prone building), **moderate earthquake** means, in relation to a building, an earthquake that would generate shaking at the site of the building that is of the same duration as, but that is one-third as strong as, the earthquake shaking (determined by normal measures of acceleration, velocity, and displacement) that would be used to design a new building at that site if it were designed on the commencement date. 30
- (2) In this regulation, **commencement date** means the day on which **section 133AB** of the Act comes into force. 35

Schedule New Schedule 1AA inserted

s 41

Schedule 1AA		
Transitional, savings, and related provisions		5
s-5A-ss 5A, 133AK, 133AL, 401C		
<i>Transitional provisions relating to Building (Earthquake-prone Buildings) Amendment Act 2013</i>		
1	Interpretation	
	In this schedule,—	10
	amendment Act means the Building (Earthquake-prone Buildings) Amendment Act 2013	
	commencement date means the day on which section 23 of the amendment Act (which inserts subpart 6A of Part 2) comes into force.	
2	Notices given under section 124 before commencement date	15
(1)	This clause applies to a building or a part of a building if, before the commencement date, a territorial authority issued a written notice under section 124(2)(c)(i) (the old notice) requiring work to be carried out on the building or part, by a deadline stated in the old notice (the old deadline), to reduce or remove the danger associated with the building or part being earthquake prone (the seismic work).	20
(2)	If subpart 6A of Part 2 does not apply to the building (<i>see</i> section 133AA),—	
	(a) the old notice is revoked on the commencement date; and	
	(b) the territorial authority must notify the owner of the building of that fact.	25
(3)	If subpart 6A of Part 2 does apply to the building,—	
	(a) the territorial authority is deemed to have determined that the building or the part of the building is earthquake prone; and	
	(b) the territorial authority need not determine the earthquake rating of the building or part; and	30
	(c) the territorial authority must, as soon as practicable after the commencement date,—	
	(i) issue an EPB notice for the building or the part of the building under section 133AK ; and	
	(ii) record the details of the building or the part of the building in the EPB register and update other information in the EPB register as	35

- necessary (but the territorial authority need not record the earthquake rating of the building or part); and
- (d) ~~if the old deadline is earlier than the applicable deadline under **section 133AL**,—~~
- (i) ~~**section 133AL** does not apply; and~~ 5
- (ii) ~~the deadline for completing the seismic work is the old deadline (subject to **subclause (5)**); and~~
- (e) ~~if the old deadline is on or after the applicable deadline under **section 133AL**,—~~
- (i) ~~the old deadline ceases to apply; and~~ 10
- (ii) ~~the deadline for completing the seismic work is the deadline that applies under **section 133AL**; and~~
- (d) the deadline for completing the seismic work is determined as follows:
- (i) if the old deadline is earlier than the deadline calculated under **section 133AL(2)**, the deadline for completing the seismic work is the old deadline (subject to **subclause (5)**); and 15
- (ii) if the old deadline is on or after the deadline calculated under **section 133AL(2)**, the deadline for completing the seismic work is the deadline calculated under **section 133AL(2)**; and
- (f) until the territorial authority issues an EPB notice, the old notice must be treated as if it were an EPB notice issued under this Act. 20
- (4) ~~For the purpose of **subclause (3)(d) and (e)**, the reference in **section 133AL(2)** to the date of the first EPB notice issued for the building or the part of the building must be read as if it were a reference to the date of the old notice.~~ 25
- (5) ~~If **subclause (3)(d)** applies to a building or a part of a building, the owner of the building or part may apply to the territorial authority for the applicable deadline under **section 133AL** to be applied instead of the old deadline, except that for this purpose **section 133AL** must be read as if the periods referred to in **section 133AL(2)** were measured from the date of the old notice instead of the date of the first EPB notice.~~ 30
- (6) ~~In deciding whether to grant an application under **subclause (5)**, the territorial authority must have regard to the particular circumstances and any guidance issued by the chief executive under section 175 for that purpose.~~
- (4) To avoid doubt, for the purpose of **subclause (3)(d)** the deadline calculated under **section 133AL(2)** is the expiry of the relevant period as measured from the date of the EPB notice and not from the date of the old notice. 35
- (5) If an old deadline is preserved by **subclause (3)(d)(i)** but the period given for completing the seismic work under the old notice is shorter than the relevant period specified in **section 133AL(2)** (for example, an old notice issued for a 40

	<u>building in an area of medium seismic risk required the owner to complete seismic work within 20 years after the date of that notice, but the period specified in section 133AL(2) that is relevant to the building is 25 years).—</u>	
	(a) <u>the owner of the building or the part of the building may apply to the territorial authority to have the relevant period specified in section 133AL(2) applied retrospectively to the date of the old notice (which would have the effect of extending the deadline for completing the seismic work); and</u>	5
	(b) <u>in deciding whether to grant the application, the territorial authority must have regard to the particular circumstances and any guidance issued by the chief executive under section 175 for that purpose; and</u>	10
	(c) <u>if the territorial authority grants the application, the deadline is the expiry of the relevant period specified in section 133AL(2), as measured from the date of the old notice and not from the date of the EPB notice.</u>	
(7)	If a territorial authority grants an application under subclause (5) , the territorial authority must—	15
	(a) issue or reissue (as applicable) an EPB notice for the building or part under section 133AK ; and	
	(b) record the details of the decision in the EPB register and update other information in the EPB register as necessary.	20
3	Policy adopted under section 131 before commencement date	
(1)	This clause applies to a policy under section 131 (policy on dangerous, earthquake-prone, and insanitary buildings) that is adopted by a territorial authority before the commencement date.	
(2)	To the extent that the policy applies to earthquake-prone buildings, the policy ceases to apply on the commencement date.	25
(3)	As soon as is reasonably practicable after the commencement date, the territorial authority must amend or replace the policy to remove references to earthquake-prone buildings.	
(4)	Section 132 applies to an amendment or a replacement made under subclause (3) , except that the special consultative procedure in section 83 of the Local Government Act 2002 (<i>see</i> section 132(2)) does not apply unless the amendment or replacement materially affects the policy as it applies to dangerous and insanitary buildings.	30
4	Effect of certain references to parts of buildings	35
	The fact that provisions added to this Act by the amendment Act refer separately to buildings and parts of buildings does not limit or affect any other provision of this Act in terms of how that provision applies in respect of parts of buildings.	

Building (Earthquake-prone Buildings) Amendment Bill

Legislative history

9 December 2013	Introduction (Bill 182–1)
5 March 2014	First reading and referral to Local Government and Environment Committee
2 September 2015	Reported from Local Government and Environment Committee (Bill 182–2)
1 March 2016	Second reading
30 March 2016	Committee of the whole House (Bill 182–3)

Wellington, New Zealand:

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